

REMARKS:

Claims 32-61 were examined. Claims 1-31 were cancelled. Claims 32-61 stand rejected. Claim 60 is both rejected and objected to. In this reply, Applicants cancel claims 32-52, 56-59 and 61 without prejudice or disclaimer, and amends claims 53-55 and 60. No new matter is introduced in this amendment.

Applicants ask that the amendment be entered, since the amendment cancels claims, conforms to Examiner's suggestion, and/or puts the claims in condition for appeal.

Claim rejections under 35 USC § 101

Claims 35, 42, 53, 57-58 and 60-61 stand rejected under 35 USC § 101 for allegedly being directed to non-statutory subject matter. Specifically, the Office alleges that "the claiming of structures being in contact with or implanted within the body amounts to an inferential recitation of the body," (office action, page 3, lines 2-4.) The Office further states that "the examiner recommends removing 'when deployed in a patient', since it is understood the device will be implanted in a patient, (Office action, page 3, lines 12-14.)

Claims 35, 42, 57-58 and 61 are canceled, thus rendering the rejection of those claims moot. Claims 53-55 and 60 have been amended to remove reference to elements of the claimed systems being in contact with or implanted within a body.

In view of the amendments, Applicants request that the rejection of the claims under 35 USC § 101 be withdrawn.

Claim rejections under 35 USC § 112, 2nd paragraph

Claims 32-61 stand rejected under 35 USC § 112, 2nd paragraph for allegedly being indefinite. The Office alleges that the "claims are vague and appear to be method claims since it provides no further structure but a mere recitation of intended use for such structure. Applicants traverse.

Claims 32-52, 56-59 and 61 are canceled, thus rendering the rejection of those claims moot. Claim 53 positively recites the components of the system and refers to their reference numbers. Additional language is used to describe the juxtaposition of the named components. Specifically, claim 53 recites the following components and their physical and functional relationship to each other: a cardiac ventricular assist device (72) comprising a first annular

magnet (54), a first sleeve (68), a second annular magnet (44), a second sleeve (72), an annular space (86), and a one-way valve (70); and a hydraulic pumping assembly comprising at least one electromagnetic coil (46, 48, 50), a pumping chamber for retaining hydraulic fluid (52), a first end cap (56), a second end cap (57), a solid high ferromagnetic-constant magnet (40), a fluid line (59, 60), a check valve (84) and a battery/controller assembly (65).

Similarly, claim 60 recites the following components and their physical and functional relationship to each other: an L-VAD and an R-VAD, each comprising a first magnet, a first vessel, a first space, a second magnet, a second vessel, a second space, and a one-way valve; and a hydraulic pumping assembly comprising a hydraulic pump, a pumping chamber, an electromagnetic coil, a fluid line having a first end and a second end, and a battery/controller assembly.

Applicants contend that the claims clearly and distinctly point out physical components of the claimed systems and assert that the Office has not established a prima facie case of indefiniteness. Applicants respectfully request, based upon the amendments and arguments, that the rejection of claims 53-55 and 60 be withdrawn and the claims allowed.

Claim rejections under 35 USC § 103(a)

Claims 32, 35-36, 39, 42-55 and 61 stand rejected under 35 USC § 103(a) for allegedly being unpatentable over Kurpanek (US 3,974,854). The Office suggests that Kurpanek “discloses the claimed invention except for the annular or open center magnets” and that “it would have been obvious to one having ordinary skill in the art to have modified the shape of the magnets,” (Office action, page 4, lines 19-21.) Applicants traverse.

Claims 32, 35-36, 39, 42-52 and 61 are canceled, rendering the rejection against those claims moot.

Applicants submit that the Office has failed to present a prima case of obviousness. (1) Kurpanek discloses rigidly fixed magnets (column column 4, lines 36-37) and fails to disclose magnets that are slideable and moveable, as the claimed invention of claims 53-55 require. Moveable magnets would render Kurpanek’s device inoperable and fixed magnets would render the claimed invention inoperable. (2) Kurpanek fails to teach a hydraulic pumping assembly in hydraulic communication with an annular space containing a moveable magnet that in turn drives an annular magnet having a one-way valve fixed to it, as claims 53-55 provide. (3)

Kurpanek fails to teach moveable a one-way valve that opens and closes as it moves in association with a moveable magnet, as claims 53-55 provide. (4) Kurpanek fails to teach a fluid line connecting the hydraulic pump to the VAD, as claims 53-55 provide.

Kurpanek fails to teach each and every element of the invention as claimed, and thus the instant invention is not merely a modification of the "shape of magnets" of Kurpanek. The Office has failed to present a prima facie case of obviousness and the Applicants ask that the rejection of claims 53-55 under 35 USC § 103(a) be withdrawn and the claims allowed.

Claims 33-34, 37-38, 40-41 and 56-58 stand rejected under 35 USC § 103(a) for allegedly being unpatentable over modified Kurpanek (US 3,974,854). Claims 33-34, 37-38, 40-41 and 56-58 are canceled, rendering the rejection of those claims moot.

CONCLUSION

Applicants submit that the claims as amended are patentable and therefore request that the Office issue a notice of allowance. However, if any outstanding issues remain, Applicants request that the Examiner call the undersigned Agent.

Respectfully yours,

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